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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JACK B. WILLIAMS,

Defendant and Appellant.

A151804

(City & County San Francisco
Super. Ct. No. SCN224517)

Appellant was sentenced to four years in prison following a late amendment to the information. Appellant contends that the trial court applied the wrong law in granting the amendment, that the California Supreme Court decision in *People v. Valladoli* (1996) 13 Cal.4th 590 was wrongly decided to the extent it allows the late amendment, and that *Valladoli* is distinguishable in that the prosecutor here intentionally and purposefully delayed requesting the amendment to the information. We affirm the judgment.

Background

Appellant Jack Williams was charged with two counts of felony indecent exposure pursuant to Penal Code Section 314, subdivision (1)¹, one count of resisting arrest pursuant to section 148, subdivision (a)(1), and one count of criminal trespass pursuant to section 602, subdivision (m). The complaint was filed on July 23, 2015 and included an allegation that Williams had suffered a prior strike conviction of First Degree Residential Burglary. The information, filed on August 19, 2015, included the four counts, but

¹ All statutory references are to the California Penal Code.

excluded the allegation that Williams suffered a prior strike conviction, and made no mention of his prison priors. (*See* § 667.5(b).) Williams was arraigned on that information on August 21, 2015, and trial was set for September 25, 2015. Around the time of the preliminary hearing on August 7, 2015, the prosecutor provided defense counsel certified records of convictions for all priors that the prosecution subsequently sought to amend.

The case was continued several times, during which the prosecutor made two offers, both rejected by the defense. The first offer included a sentence of one year in county jail followed by three years of probation. The second offer was for release from custody with felony probation.

On April 21, 2017, less than a week before trial and almost two years after the original filing, the prosecutor filed a motion to amend the information to include allegations that Williams had suffered a prior strike conviction and that he had served two prior prison terms. (*See* § 667.5(b).) The defense objected, stating that the amendment was the result of vindictive prosecution for Williams' assertion of his right to a jury trial. The court shared defense counsel's concerns, but granted the prosecution's request to amend the information: "[A]s sort of troubled that I am that this request for amendment is coming at this time, the pleading laws are quite liberal in this state, and *as these don't affect the substantive charges*, although I understand they may have a huge impact should Mr. Williams be found guilty on potential sentencing, I think it would be error for me to deny their request, so I am going to go ahead and grant their leave to amend and you may file your first-amended Information." (Italics added.)

Williams was convicted on all counts and sentenced to four years in prison. Appellant filed a timely notice of appeal.

Discussion

A "trial court's decision to permit [an] amendment [to the information] cannot be disturbed unless an abuse of discretion is shown." (*People v. Jones* (1985) 164 Cal.App.3d 1173, 1179; *Valladoli, supra*, 13 Cal.4th at pp. 606, fn 3.) We find no such abuse.

First, Williams contends that the trial court applied the incorrect law in granting the amendment to the information. A trial court is presumed to know and apply the correct statutory and case law. (*People v. Thomas* (2011) 52 Cal.4th 336, 361.) Appellant does not overcome that presumption here because, although the trial court's language is consistent with section 1009, it is also consistent with section 969a, which is the statute that applies in this case. Section 969a provides that a trial court may grant an amendment to the information if the prosecution discovers that the original information does not charge all prior felonies of which the defendant has been convicted. As the Attorney General points out, in this case "the court's observation that the amendment did not concern substantive charges, suggests it recognized the amendment concerned prior conviction allegations, the addition of which to the information is controlled by Penal Code section 969a."

Second, Williams requests that we revisit the California Supreme Court decision in *Valladoli*. The doctrine of stare decisis requires all lower courts to follow decisions of higher courts within their jurisdiction, and thus this Court is bound by *Valladoli* and will not revisit that ruling. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Finally, Williams argues *Valladoli* only permits amendments to the information if the omission of prior convictions was inadvertent and unintentional. In this case, Williams argues the prosecutor had actual knowledge that the strike offense and prison priors were not included in the information, and the delayed amendment was strategic. We disagree.

Section 969a is broad enough to include "amendment to charge prior felony convictions that were previously known." (*Valladoli, supra*, 13 Cal.4th at pp. 606.) Additionally, the Court in *Valladoli* articulated a non-exhaustive list of factors a court should look to when exercising its discretion. (*Valladoli, supra*, 13 Cal.4th at pp. 607–

608.)² Applying those factors here, we find that the court did not abuse its discretion in granting the motion to amend the information. First, when articulating the reason for the late amendment, the prosecutor stated it was a mere oversight, and denied any malicious intent. Second, defense counsel conceded that she received discovery related to the prior convictions and sentences and thus was on notice of Williams’ criminal history and potential exposure. Third, defense counsel also stated that she had advised her client of his potential exposure, and did not allege that the failure to include the prior convictions in the information had any effect on Williams’ decision to proceed with trial. Fourth, the prior felony conviction, but not the two prior prison terms, were charged in the original complaint. And finally, the motion to amend the information took place a week prior to when the jury trial was scheduled to begin. In this instance, had defense counsel felt the need to prepare further based on the amendment, she could have moved for a continuance.

While the amendment to the information occurred almost two years after the original complaint was filed, the amendment did not prejudice the defendant.

Disposition

The judgment is affirmed.

² “In exercising such discretion, courts should scrutinize (i) the reason for the late amendment, (ii) whether the defendant is surprised by the belated attempt to amend, (iii) whether the prosecution’s initial failure to allege the prior convictions affected the defendant’s decision during plea bargaining, if any, (iv) whether other prior felony convictions had been charged originally, and (v) whether the jury has already been discharged.”

Tucher, J.

We concur:

Pollak, P.J.

Brown, J.

People v. Williams (A151804)